

Effective 5/13/2014

Part 1 General Provisions

38-9-101 Title.

- (1) This chapter is known as the "Wrongful Lien Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 114, 2014 General Session

38-9-102 Definitions.

As used in this chapter:

- (1) "Affected person" means:
 - (a) a person who is a record interest holder of the real property that is the subject of a recorded nonconsensual common law document; or
 - (b) the person against whom a recorded nonconsensual common law document purports to reflect or establish a claim or obligation.
- (2) "Document sponsor" means a person who, personally or through a designee, signs or submits for recording a document that is, or is alleged to be, a nonconsensual common law document.
- (3) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.
- (4) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.
- (5) "Nonconsensual common law document" means a document that is submitted to a county recorder's office for recording against public official property that:
 - (a) purports to create a lien or encumbrance on or a notice of interest in the real property;
 - (b) at the time the document is recorded, is not:
 - (i) expressly authorized by this chapter or a state or federal statute;
 - (ii) authorized by or contained in an order or judgment of a court of competent jurisdiction; or
 - (iii) signed by or expressly authorized by a document signed by the owner of the real property;
 - and
 - (c) is submitted in relation to the public official's status or capacity as a public official.
- (6) "Owner" means a person who has a vested ownership interest in real property.
- (7) "Political subdivision" means a county, city, town, school district, special improvement or taxing district, local district, special service district, or other governmental subdivision or public corporation.
- (8) "Public official" means:
 - (a) a current or former:
 - (i) member of the Legislature;
 - (ii) member of Congress;
 - (iii) judge;
 - (iv) member of law enforcement;
 - (v) corrections officer;
 - (vi) active member of the Utah State Bar; or
 - (vii) member of the Board of Pardons and Parole;
 - (b) an individual currently or previously appointed or elected to an elected position in:

- (i) the executive branch of state or federal government; or
- (ii) a political subdivision;
- (c) an individual currently or previously appointed to or employed in a position in a political subdivision, or state or federal government that:
 - (i) is a policymaking position; or
 - (ii) involves:
 - (A) purchasing or contracting decisions;
 - (B) drafting legislation or making rules;
 - (C) determining rates or fees; or
 - (D) making adjudicative decisions; or
- (d) an immediate family member of a person described in Subsections (8)(a) through (c).
- (9) "Public official property" means real property that has at least one record interest holder who is a public official.
- (10)
 - (a) "Record interest holder" means a person who holds or possesses a present, lawful property interest in real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.
 - (b) "Record interest holder" includes any grantor in the chain of the title in real property.
- (11) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.
- (12) "Wrongful lien" means any document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded is not:
 - (a) expressly authorized by this chapter or another state or federal statute;
 - (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
 - (c) signed by or authorized pursuant to a document signed by the owner of the real property.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-103 Scope.

- (1) This chapter does not apply to a notice of interest filed before May 5, 2008.
- (2) This chapter does not apply to a lis pendens recorded in accordance with Section 78B-6-1303 and does not prevent a person from seeking any other relief permitted by law.
- (3) This chapter does not apply to a person entitled to a preconstruction or construction lien under Section 38-1a-301 who files a lien pursuant to Title 38, Chapter 1a, Preconstruction and Construction Liens.

Renumbered and Amended by Chapter 114, 2014 General Session